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Delegation/Exemption under the Planning Act

Implementation Strategy

F I N A L R E P O R T

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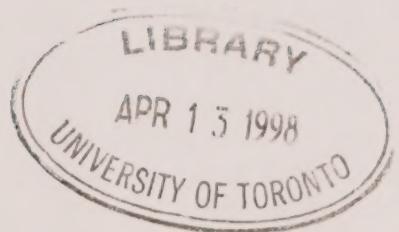


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*Stratégie d'application
de la délégation et des exemptions*



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Context

In fall and winter 1995/96, the Ontario government consulted on Bill 20, the Land Use Planning and Protection Act, which came into force on May 22, 1996. The new Act was the result of the government's commitment to a sound, efficient and effective planning system, one which would enhance local autonomy, eliminate overlap and duplication, and bring about streamlined decision-making. During the consultation, the Association of Municipalities of Ontario (AMO) recommended legislation that would implement a community-based planning model, allowing for greater local autonomy in decision-making. In response, in Bill 20, the government provided for exemption from approval for an official plan and official plan amendments.

To facilitate the process of moving toward exemption, in November 1996 the Ministry of Municipal Affairs and Housing (MMAH) released for discussion and comment an Exemption Implementation Strategy. The proposed strategy included a two-year time period during which there would be progressive delegation of planning authority to municipalities and planning boards, followed by the subsequent exemption of official plans and amendments from approval. The strategy was distributed for comment to municipalities and planning boards as well as to various professional, private and public organizations with an interest in the planning system.

During the consultation, 70 responses were received from municipalities, planning boards and organizations. Generally, the comments were supportive of the principle of exemption and some suggestions were made for improvement. Many of the suggestions have been incorporated into this final strategy, resulting in a better balance between the need for local autonomy and the protection of provincial interests.

The Implementation Strategy

Introduction

The implementation of exemption from approval of official plans and amendments and delegation of approval authority by the minister will proceed in phases. Each phase will build on the authority and responsibility transferred in the previous phase. An example of this would be the delegation of consents in one phase, followed by the delegation of subdivision approval authority in a subsequent phase, and finally, exemption.

The implementation of the strategy will be consistent with the existing municipal plan review timetable and current restructuring discussions. The Ministry of Municipal Affairs and Housing will have a reduced role in planning approvals, but will maintain a presence in the planning system through the provincial one-window plan input, review and appeal services.

Components of the Strategy

The phases outlined in this report are based on the progressive delegation of the minister's approval authority. The exemption from ministerial approval will spell out and include conditions that relate to the performance measures that will help both the province and municipalities in assessing the overall effectiveness of their planning programs. In addition, it should be noted that Sections 2 and 3 of the Planning Act require that a council of a municipality, in exercising any authority that affects a planning matter, shall have regard to provincial interests and the Provincial Policy Statement (PPS), respectively. Since municipalities will be engaged in identifying and endeavouring to protect provincial interests (also known as Municipal Plan Review), exemption orders may also contain conditions pertaining to the carrying out of Municipal Plan Review as an integral part of the municipal planning process. These conditions are outlined in the sections titled ***Reporting*** and ***Conditions***.

Exemption

Exemption from approval at this point applies to official plan amendments only: official plans will remain subject to the approval of the minister or the upper tier municipality (region/county). Similarly, the authorization of upper tier approval authorities to exempt lower tier municipalities (e.g., towns and townships) under ss.17(10) will include the power to exempt from approval lower tier official plan amendments only and not official plans. This authorization will come into effect 12 months after the upper tier receives exemption from ministerial approval.

This approach reflects the need to protect the broader provincial and regional interests and to protect as well such things as infrastructure and sensitive environmental resources that have impacts across municipal boundaries.

The province and the upper tier municipalities will continue to provide a coordinating function through the approval of official plans, the introduction of provincial one-window planning, and Municipal Plan Review (MPR). The effective implementation of one-window/MPR will rely on input and consultation at the beginning of the local planning process. This would include commenting on draft amendments, attending public meetings, and working out solutions to planning issues in cooperation with affected stakeholders.

The deferral for 12 months of authorization of upper tier municipalities to exempt their lower tier municipalities will allow for further development of the municipal plan review and restructuring exercises currently underway. The timing of exemption and related conditions for lower tier exemption will continue to be an upper tier responsibility.

Delegation

The delegation of the minister's approval authority (consents, subdivisions/condominiums and lower tier official plan amendments) will be based on a balance between local planning capability and the continued promotion of local autonomy.

The delegated approval function will be tied to the most relevant level and to existing planning capability. Where local planning capacity does not exist, some limited approval authority will be delegated, with the expectation that planning programs will be developed so that the service can be provided in a responsible manner. Counties without established planning programs, for example, would receive delegation of subdivision approval authority with the expectation that a planning program will be established. Subdivision delegation and education and training efforts to build capacity should result in an established planning program. Additional delegation of authority to these counties would be contingent on the further development of the county planning program.

With regard to Northern Ontario, it is recognized that the government is currently dealing with the issue of appropriate governance that takes into account, among other issues, the Who Does What panel (WDW) recommendations. Consequently, the delegation of consent approval authority, and in some cases, subdivision/condominium approval authority, to planning boards and some northern municipalities is likely to be appropriate. It is also fitting to exempt from approval official plan amendments proposed by planning boards or municipalities within planning areas.

Restructuring

Given the significant number of restructuring activities currently underway and the possible impacts of service delivery options in Northern Ontario, each municipality and planning board will be assessed prior to implementation of the exemption/delegation strategy with regard to active restructuring exercises and any legislation affecting municipal boundaries.

Phased transfer of approval authority will take into account municipal restructuring. However, if it is determined that implementation will interfere with restructuring or is premature, depending on where planning functions will be located, the phasing will be adjusted to accommodate the situation of individual municipalities (e.g., Counties of Frontenac and Lennox and Addington).

Status of Official Plans

The Planning Act provides for the assignment of approval authority to upper tier municipalities immediately upon the approval of new parent official plans. Because a number of upper tier municipalities are preparing new official plans, the implementation phasing will be adjusted according to the projected timing for the approval of these documents.

Assessment of the Planning System

It is the responsibility of the province to assess the broad, overall performance of the streamlined, policy-led planning system under Bill 20. Conditions included in the exemption orders will help to provide performance measures that will assist the province, municipalities and other stakeholders to evaluate the operation of the planning system. This evaluation will also provide insight into the need for further system changes.

The province will report annually on the effectiveness and efficiency of these improvements to the planning system. The second annual assessment will be used to determine whether further changes need to be made to the system, including exemption provisions and/or delegated powers.

Planning Support Services

In the interests of enhancing local autonomy, the Ministry of Municipal Affairs and Housing will provide increased planning system support services to assist municipalities in delivering local planning services. This will include operational and administrative education and training and the development and provision of technological support tools (e.g., computer tracking systems, assistance in interpreting policy, on-line access to ministry information and services, etc.).

Phasing

The implementation of the exemption/delegation strategy will take place in an incremental series of three six-month phases, with each phase building on existing planning responsibilities.

The implementation of exemption in the new City of Toronto will be determined as a result of consultation once the new city is in place.

It is important to note that there are a few municipalities not included in the phasing section. Other municipalities undergoing formal restructuring exercises will be included in the phasing section immediately following the completion of the restructuring process.

Under the provisions of the Planning Act, when an upper tier municipal official plan or part of it comes into effect, the upper tier municipality is assigned approval authority for lower tier official plans and amendments as well as for plans of subdivision\condominium (where it has not yet been delegated). For upper tier municipalities presently preparing official plans, the transfer of approval powers will occur automatically through the provisions of the Planning Act rather than through separate delegation orders under this strategy. The exemption of these upper tier municipalities will occur in the phase immediately following the approval of the official plan. The following counties are required by regulation to adopt new official plans by December 31, 1997:

County of Bruce	County of Grey	County of Hastings
County of Huron	County of Lambton	County of Middlesex
County of Peterborough	County of Perth	County of Simcoe
County of Wellington	United Counties of Prescott & Russell	

Phase 1: Up to December 1997

- ▶ **Exempt** from ministerial approval all upper tier official plan amendments for the Regional Municipalities of York, Durham, Halton, Hamilton-Wentworth, Waterloo, Ottawa-Carleton, Peel, Niagara, Haldimand-Norfolk, Sudbury, District of Muskoka and County of Oxford.
- ▶ **Exempt** from ministerial approval all official plan amendments for separated cities, cities in the north and the Town of Orangeville.
- ▶ **Delegate** the minister's authority to approve subdivisions to the County of Renfrew.

Phase 2: January to June 1998

- ▶ **Exempt** from ministerial approval the official plan amendments for the new City of Toronto.
- ▶ **Exempt** from ministerial approval official plan amendments for the County of Prince Edward (restructured).
- ▶ **Delegate** the minister's authority to approve lower tier official plans and amendments to the County of Victoria.
- ▶ **Delegate** subdivision/condominium approval authority to the Counties of Brant, Dufferin, Elgin, Essex, Haliburton, Lanark, Leeds & Grenville, Stormont, Dundas and Glengarry as it applies to constituent lower tier municipalities without planning departments.* This

delegation is to be based on the condition that these counties do not have the power to sub-delegate the authority to the lower tier municipality without the minister's approval. **and/or**

- ▶ Consider **delegating** subdivision/condominium approval authority to lower tier municipalities with planning departments, within counties that do not currently have a county plan and/or planning department (Brant, Dufferin, Elgin, Essex, Haliburton, Lanark, Leeds & Grenville, Northumberland and Stormont, Dundas and Glengarry). Delegation* will depend on factors such as the status of local restructuring, alternative planning service delivery, planning programs in place and other issues affecting the delivery of planning services.
- ▶ **Delegate** subdivision/condominium approval authority to any municipal planning authority.
- ▶ **Delegate** subdivision/condominium approval authority to separated towns (St. Marys, Gananoque, Prescott and Smiths Falls).
- ▶ **Delegate** the minister's authority to approve consents to planning boards that do not have this responsibility.
- ▶ **Delegate** the minister's authority to approve subdivision/condominium to planning boards.

Phase 3: July to December 1998

- ▶ **Exempt** from ministerial approval official plan amendments of the prescribed counties whose official plan has come into effect in Phase 2.
- ▶ **Exempt** from ministerial approval official plan amendments for the County of Victoria.
- ▶ **Exempt** from ministerial approval official plan amendments for separated towns (St Marys, Gananoque, Prescott and Smiths Falls).
- ▶ **Exempt** from ministerial approval official plan amendments for planning boards and/or municipalities within planning areas.
- ▶ **Delegate** the Minister's authority to approve consents to the remainder of northern municipalities that presently do not have the authority.*
- ▶ **Delegate** subdivision/condominium approval authority and/or **exempt** from ministerial approval official plan amendments in restructured municipalities as appropriate.

(* means amendments to Planning Act required)

After Phase 3:

Assuming the complete implementation of these three phases as noted above, the MMAH would remain the approval authority for the following:

official plans for upper tier and single tier municipalities, separated cities and the Town of Orangeville, planning boards and municipal planning authorities;

official plans and amendments for lower tier municipalities within counties where the county does not have an official plan and there is no municipal planning authority (Brant, Dufferin, Elgin, Essex, Haliburton, Lanark, Leeds & Grenville, Northumberland, Lennox & Addington, Renfrew, Frontenac and Stormont, Dundas & Glengarry); and

official plans, amendments and plans of subdivision/condominium for northern municipalities within districts outside of planning boards; and **consents and plans of subdivision/condominium** for unorganized territory not included in a planning area.

MMAH would also continue its input, review and appeal function as the defined approval authority whether or not exemption has been granted. Under the provisions of ss. 17(15) and 22(1) (a) of the Planning Act, notice of official plans and/or amendment must be provided to MMAH as prescribed by regulation.

It should be noted that as restructuring initiatives and/or the creation of new municipal planning authorities or planning boards occur, appropriate adjustments to retained approval authority will occur.

Performance Measures

With the emphasis on a policy-led planning system, the ability to assess the performance of the new system takes on increased importance.

Measuring performance will help municipalities assess the effectiveness of various components of their planning programs, such as their official plans, operational policies and procedures. On a broader scale, it will allow for a more comprehensive assessment of the value added by municipal planning and contribute to budget and resource forecasting.

MMAH is currently developing performance measures for the land use planning system in three areas: decision accounting, trends analysis and implementation of the new planning system.

Within the exemption strategy, performance measures will allow the province to assess the performance of the Planning Act, the Provincial Policy Statement, and the delivery of planning services. This can include a five-year review of official plans and a review of administrative practices. In terms of trends analysis, municipalities and planning boards will be encouraged to undertake performance monitoring of the broad trends in land use planning. Third, the exemption performance measures will help MMAH to understand the progress being made in implementing the new planning system.

Reporting

To assist in gathering information related to the performance of the new planning system, exempted municipalities will submit a policy evaluation report to the approval authority (MMAH) each year. This information will complement the internal tracking of indicators compiled by the ministry.

Similarly, reporting on performance indicators would also be carried out by lower tier municipalities for which an upper tier is the official plan approval authority.

Conditions

To facilitate assessment of the performance of the planning system, the exemption/authorization orders will include conditions. The conditions applied will:

- require a copy of a draft official plan amendment be forwarded to the approval authority (i.e. the minister or upper tier municipality) as part of the information to be provided under ss. 17(15) and ss. 22(1). The corresponding regulation will be amended to include a draft copy of the document as part of the information package.
- require a copy of the clerk's declaration under ss. 17(28) which confirms the decision's effective date.
- require that the minister receive a copy of the clerk's record that is forwarded to the OMB under ss. 17(29) and ss. 22(9) for official plan amendments that are appealed.
- require the completion of a policy evaluation report to be submitted to the approval authority. As a complementary condition, upper tier approval authorities will include information from the lower tier municipalities.

The above-noted information will be added to the approval authority's in-house data. The management of this data, responses and critical dates will assist in the evaluation of the planning system by the ministry and/or approval authority. The data will be used to track:

- the performance and effectiveness of early consultation/input
- extent of, and issues associated with, appeals
- performance/implementation of the Provincial Policy Statement.

Data compiled will form the basis of the MMAH Annual Report on Planning in Ontario.

Conclusion

The implementation of the exemption strategy will rely on effective delivery of the provincial one-window plan input, review, and appeal services, on the Municipal Plan Review (MPR) process, and on preconsultation, both provincially and municipally. It will also rely on the expectation that municipalities, planning boards and the development industry will have regard to and implement provincial interests in applications and decisions.

While exemption removes a second level of approval from the planning system, thus streamlining the approval process, it is important that a broader perspective of the planning system be maintained. The effective practice of one-window, MPR and early preconsultation is key to ensuring that provincial, municipal and cross boundary planning interests are coordinated and protected. The commitment on the part of all stakeholders in the planning process to work cooperatively and provide timely information and input through the planning process is of paramount importance.

Any questions about this document should be directed to:

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